

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 878 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

SHAMBHURAM VALJI BHANUSHALI

Appearance:

MR RC KODEKAR, APP for Appellant
MR YS MANKAD for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 15/10/1999

ORAL JUDGEMENT

1. The appellant - State of Gujarat has filed this Appeal under Section 378 of the Code of Criminal Procedure, 1973, challenging the judgment and order dated July 15, 1992, passed by the learned Judicial Magistrate, First Class, Naliya - Kutch, in Criminal Case No. 262 of

1988, whereby the respondent was acquitted for the offences punishable under Sections 323, 325, 326 and 504 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. Brief facts of the prosecution case as unfolded at the trial be summarised as under :

On September 21, 1988 at about 9.00 a.m. the injured witness Sangramji Waghji was proceeding towards his field. When he reached Lala Road, the respondent, who was following Sangramji, caught hold of his abdominal part and gave a fist blow. Thereafter, the respondent gave a stick blow on the right eye of the injured Sangramji, as a result of which, eye ball of the right eye had come out and there was profused bleeding from the right eye. The injured Sangramji raised shouts, as a result of which, PW-3 Gabhubhai, PW-7 Tejmalji, who were working in their fields came to the rescue of the injured. The respondent saw Gabhubhai and Tejmalji running towards him. Therefore, he run away from the place of the incident. PW-3 Gabhubhai went to the village and brought a hand cart and took the injured in the said hand cart to the Police Station and thereafter the injured was brought to Government Hospital at Naliya. At the Naliya Hospital, the injured was given treatment. As there was serious injuries in the right eye, the Doctor on duty at Naliya Hospital had referred the injured Sangramji to the Civil Hospital at Bhuj. At the Civil Hospital, Bhuj, right eye ball of the injured was removed. PW-1 Jakhraji, who was the cousin of injured Sangramji, lodged FIR against the respondent at Jakhau Police Station on September 23, 1988 at about 1345 hours. The said FIR was registered as CR-I 3 of 1988 for the offences punishable under Sections 325, 323 and 504 of the IPC. The investigation of the above crime was handed over to PW-13 Devilal Chida Gurau, who was at the relevant time serving as Police Sub Inspector at Jakhau Police Station. The Investigating Officer obtained the Medical Certificate of the injuries sustained by Sangramji and gave a report for the offences punishable under Section 326 of the I.P.C. A panchnama with regard to the physical condition of the injured Sangramji was drawn at the Civil Hospital, Bhuj. On 26.9.1988 the respondent came to be arrested under a panchnama. The muddamal stick was recovered from the possession of the respondent in presence of an independent panch and panchnama to that effect was also drawn. On completion of the investigation, charge sheet came to be filed against the respondent for the offences punishable under

Sections 323, 325, 326 and 504 of the IPC and under Section 135 of the Bombay Police Act, in the court of Judicial Magistrate, First Class, Nakhatrana - Kutch. The said charge sheet was came to be registered as Criminal Case No. 262 of 1988.

3. Charge - Exhibit-4 was framed against the respondent on July 13, 1989 for the offences punishable under Sections 323, 325, 326 and 504 of the IPC and under Section 135 of the Bombay Police Act, which was read over and explained to the respondent. The respondent while pleading not guilty to the charge and claimed to be tried. To prove the case against the respondent, the prosecution examined the following witnesses :

- (i) PW1 Jakhraji Naranji - Exh.10
- (ii) PW2 Sangaramji Waghji - Exh. 12
- (iii) PW3 Gabhubhai Kanji - Exh. 13
- (iv) PW4 Ramaniklal Pujabhai - Exh.14
- (v) PW5 Hirachand Bhagawanji - Exh.16
- (vi) PW6 Babugar Parshottam - Exh.18
- (vii) PW7 Tejmalji Naranji - Exh.20
- (viii) PW8 Jemalji Ramsanghji - Exh.21
- (ix) PW9 Siddik Bhachu Hajam (Barber) - Exh.22
- (x) PW10 Dr. Narendrakumar Dolatram - Exh. 23
- (xi) PW11 Maheshbhai Premjibhai Dutiya - Exh.30
- (xii) PW12 Dayal Mavji Pradhan - Exh.32
- (xiii) PW13 PSI - Devilal Chida Gurau - Exh.34

4. The prosecution has also produced documentary evidence, such as, NC Complaint - Exh.36, panchnama of the place of incident, physical condition of the injured, panchnama of seizure of muddamal stick from the respondent, medical case papers of Civil Hospital, Bhuj, Primary Health Centre at Naliya, etc.

5. The learned Judicial Magistrate First Class, on over all appreciation of oral as well as documentary evidence and the arguments advanced by the learned advocates of the parties, observed that there were many contradictions with regard to the injury caused to the right eye of the injured by the respondent as stated by witnesses examined by the prosecution. It was observed by the learned Magistrate that injured Sangramji had deposed that the respondent had himself taken out the eye ball of his right eye, but the medical evidence did not get corroboration of the oral testimony of the witnesses and there were major contradictions in the evidence of injured Sangramji, Gabhubhai and Tejmalji with regard to the injuries sustained by Sangramji. Learned Metropolitan Magistrate concluded that as major

contradictions emerging from the prosecution witnesses, which caused serious doubt that the respondent was the person, who had caused injuries to the injured Sangramji. It was further observed by the learned Magistrate that the injuries on the right eye sustained by the injured Sangramji was possible by a ball of hard substances. It was also observed by the learned Magistrate that the incident in question had taken place at about 9.00 a.m. on the road, where many persons used to pass through, but, the prosecution did not choose to record the statement of independent witnesses and instead recorded statement of closely related persons, which also raised serious doubt about the involvement of the respondent with the crime lodged against him. Learned Magistrate further observed that as per the oral testimony of injured Sangramji, the respondent had come from back side and had caught hold of the abdominal part and thereafter had given stick blow on the right eye was highly improbable and the prosecution witnesses had tried to suppress the real version of the prosecution about the incident and the manner in which it had taken place. Therefore, it was concluded by the learned Magistrate that the prosecution had tried to suppress the genesis of the incident.

6. On the basis of the above referred to conclusion, the learned Magistrate by his judgment and order dated July 15, 1992, acquitted the respondent from the charges levelled against him, which has given rise to the filing of the present Appeal by the Appellant - State of Gujarat.

7. Learned Additional Public Prosecutor Mr. R.C. Kodekar, has taken me through the entire evidence produced on the record of this case and has submitted that the respondent had caused serious injury on the right eye of the injured Sangramji by giving a blow with stick. It is submitted by the learned Addl. Public Prosecutor that the witnesses examined by the prosecution had categorically deposed that the respondent was a person who had used to exchange words at the shop of Barber and, therefore, the respondent had a grudge against Sangramji and, therefore, there was a motive behind the commission of the crime. It is submitted by the learned Addl. Public Prosecutor that the learned Magistrate has given undue importance to the minor contradictions and omissions which occurred in the oral evidence of the prosecution witnesses. Learned Addl. Public Prosecutor further submitted that the respondent was a person who had caused serious injuries on the right eye of the injured Sangramji and, therefore, the learned

Magistrate erred in acquitting the respondent and, there was sufficient evidence to collect the respondent with the commission of the crime and, therefore, the appeal be allowed and the order of acquittal be quashed and set aside.

7. Learned counsel for the respondent Mr. Y.S. Mankad, on the other hand, has submitted that the respondent was falsely involved in this case as he did not depose in favour of PW1 - Jakhraji in a court of law and, therefore, PW1 had a grudge against the respondent and, therefore, he was falsely involved in the present case. Learned counsel for the respondent further submitted that there were major contradictions with regard to the manner in which the incident had taken place. The learned counsel for the respondent further submitted that even the injured Sangramji did not depose that the respondent had given stick blow on the right eye because as per the version of the injured Sangramji, the respondent had come from back side and caught hold of his abdominal part, and therefore, it was not possible for the respondent to give a stick blow while coming in front of injured Sangramji. It is submitted by the learned counsel for the respondent that if the respondent had come from the back side of the injured Sangramji, then it was not believable that he could have given stick blow on the right eye. It is submitted by the learned counsel for the respondent that the prosecution has suppressed the genesis of the incident. On the aforesaid, benefit of doubt be given to the respondent and the appeal be dismissed.

9. It becomes evident that in the present case, all the witnesses who claimed to be the eye witnesses to the incident are closely related. Their presence at the place of incident is to some extent becomes doubtful. Gabhubhai and Tejmalji are the cousins of injured Sangramji were working in their fields, which were at a distance of two fields away. Therefore, it could not have been possible for them to witness the incident that the respondent has given stick blow on the right eye of the injured Sangramji. The version given by the witnesses with regard to the injury on the right eye of Sangramji is not consistent. One witness had deposed that there was profused bleeding from the eye whereas the other witness deposed that the eye ball had come out from the socket. The injured Sangramji went to the extent of deposing that the respondent himself had taken out the eye ball from the socket. The learned Magistrate had elaborately discussed the evidence of the prosecution witnesses and had rightly pointed out that there were

many major contradictions and omissions were found in the evidence of the prosecution witnesses, which caused a serious doubt about the involvement of the respondent with the commission of crime.

10. The learned Magistrate on consideration of the entire evidence and the conduct of the parties, had rightly come to the conclusion that the evidence of the prosecution, did not unfold the version put by the witnesses correctly and they were trying to suppress the genesis and the real truth about the incident. It is not necessary to discuss the entire evidence of the witnesses examined by the prosecution or to restate the effect of their evidence or to reiterate the reasons given by the trial court for rejecting their evidence. In my view, the expression of general agreement with reasons given by the court decision of which is under appeal would ordinarily suffice. (See: Girijanandini vs. Bijendra Narain, AIR 1967 SC 1124.) The High Court ordinarily will not interfere with the reasoning of the Magistrate unless there are compelling reasons on account of manifest error of law or miscarriage of justice. The learned Magistrate had acquitted the respondent on proper appreciation of evidence and, therefore, the Appellate court would interfere only when the judgment of the Trial Court is palpably wrong and erroneous. The decision for acquittal of the respondent given by the trial court cannot be said to be palpably wrong and, therefore, I do not see any reason to interfere with the order of acquittal recorded by the learned Magistrate, which is in accordance with law and on proper appreciation of evidence.

10. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor had failed to dislodge the reasons given by the learned Magistrate in order to convince this court to take a view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

11. For the foregoing reasons, I do not find any substance in the Appeal. The Appeal, therefore, fails and is dismissed.

p.n.nair